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February 3, 2025

**VIA ECF**

Honorable Jennifer L. Rochon  
United States District Court  
Southern District of New York  
500 Pearl Street – Courtroom 20B  
New York, New York 10007

**Re:   Morgan Art Foundation Limited v. McKenzie d/b/a American Image Art**  
**Civil No.: 1:18-cv-04438-JLR-BCM.**

Dear Judge Rochon:

Please be advised that the undersigned counsel represents Defendant, Michael McKenzie d/b/a American Image Art. I am writing to respectfully request an extension of time to file objections to the Report and Recommendations issued by Magistrate Judge Barbara C. Moses regarding Plaintiff, Morgan Art Foundation Limited's, motion for terminating sanctions as against my client. *See* ECF Doc. No.: "560," Report and Recommendations.

Pursuant to your Individual Rules of Practice in Civil Cases, please be further advised that the current deadline for Defendant's filing of objections is February 7, 2025.<sup>1</sup> Defendant respectfully requests a three ("3") week extension of said date, which, if granted, would adjourn the filing of the objections until, and including, February 28, 2025. This is the first request for an extension of time to file this document. The instant letter is submitted following consultation with Plaintiff's counsel, Luke Nikas, Esq., who has consented to this request. If granted, the extension will not affect any other deadlines presently scheduled in this matter.

This application for additional time to file the objections is being submitted due to the fact that Defendant's prior counsel withdrew from this matter following the death of its principal partner and the subsequent dissolution of said firm. *See* ECF Doc. No.: "556." The undersigned

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<sup>1</sup> It is stated within the Report and Recommendations that Defendant shall file objections within seventeen ("17") days of the date of mailing of the Report and Recommendations by the Clerk. *See* ECF Doc. No.: "560," Page "52." The Report and Recommendations were mailed on January 21, 2025. *Id.*

counsel was retained following the issuance of the Order on prior counsel's Motion to Withdraw and has immediately made extensive efforts to familiarize herself with a docket spanning over five hundred ("500") documents. Further, the undersigned is currently awaiting receipt of a USB flash drive with the entirety of the files received and exchanged between the parties in this matter during discovery. A flash drive was ordered and mailed to prior counsel at her request. *See* Exhibit "1," Email Exchange with Bridget Zerner, Esq.

The receipt of said flash drive is indispensable to the drafting of any objections to the Report and Recommendations regarding the sanctions motion. It is alleged within said motion that Defendant has committed egregious discovery violations, thus warranting terminating sanctions. In their Report, Magistrate Judge Barbara C. Moses recommends that Defendant's Second, Third, Fourth, and Eighth Counterclaims should be stricken in their entirety; that Plaintiff should be awarded a default judgment as to liability on its claim for tortious interference of contract against Defendant; that Defendant should be precluded from making any affirmative use (whether at trial or in motion practice) of salient documents and witnesses; that Plaintiff should be permitted to introduce evidence to the jury concerning Defendant's alleged failure to timely disclose or produce certain documents and communications; and that Defendant should be required to reimburse Plaintiff's reasonable expenses, including attorneys' fees and out-of-pocket costs, incurred after May 25, 2021, to obtain the documents and information allegedly withheld by the Defendant.

The relief recommended by the Magistrate Judge is detrimental, if not wholly ruinous, to Defendant's case if affirmed by Your Honor. As such, the Report and Recommendations require a thorough and detailed response given their potential consequences.

Accordingly, as the undersigned counsel is unable to address the specific discovery violations alleged against the Defendant without access to, and a review of, the files produced and exchanged during discovery, a short extension of time is respectfully requested. As evidenced within the email exchange annexed hereto as Exhibit "1," the requested files will be mailed later this week by my predecessor.

Thank you very much in advance for the Court's time and consideration. If necessary, the undersigned is available to discuss any issues or concerns regarding this correspondence at the Court's convenience.

Respectfully submitted,

NICOLE BRENECKI, ESQ.

*Partner*